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SMOKING POLLUTION CONTROL

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## ARTICLE 6

### SMOKING POLLUTION CONTROL

SEC. 5-6.00 TITLE. This article shall be known as the 'Smoking Pollution Control Ordinance.'

SEC. 5-6.01 FINDINGS AND PURPOSE. The City Council of the City of Hayward hereby finds that:

- a. Numerous studies have found that tobacco smoke is a major contributor to indoor pollution;
- b. The U.S. Environmental Protection Agency has determined that second-hand smoke is a Class-A carcinogen for which there is no safe exposure level;
- c. Reliable studies have shown that breathing second hand smoke is a particular health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- d. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm;
- e. Nonsmokers with allergies or respiratory diseases, and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;
- f. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to second-hand smoke;
- g. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places;
- h. Smoking is a documented cause of fires;
- i. Cigarette, cigar burns, and ash stains on merchandise and fixtures cause economic losses to businesses;
- j. The Surgeon General has determined that cigarettes and other forms of tobacco are as addictive as drugs such as heroin and cocaine;
- k. The free distribution of cigarettes encourages people to begin smoking, and tempts those, who had to quit, to begin smoking again;

- l. With certain exceptions, state law prohibits smoking inside an enclosed place of employment;
- m. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision of school district employees;
- n. State law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.

WHEREFORE, it is the intent of the City Council of the City of Hayward in enacting this ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco use around non-tobacco users; by protecting children from exposure to smoking and tobacco while they play; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from smoking and tobacco-related litter and pollution; and by affirming and promoting the family atmosphere of the City's public places.

SEC. 5-6.02 DEFINITIONS. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- a. 'Business' means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- b. 'Dining area' means any area, both enclosed and unenclosed, available to or customarily used by the general public, that is designed, established, or regularly used for the consuming food or drink;
- c. 'Enclosed' means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.
- d. 'Playground' means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.
- e. 'Public Place' means any place to which the public is invited or in which the public is permitted including, but not limited to, any rights-of-way, (*which include but are not limited to sidewalks, streets, and medians*), banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

- f. 'Reasonable distance' means any distance necessary to insure that occupants of a building are not exposed to second-hand smoke created by smokers outside of the building.
- g. 'Recreational area' means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, and playgrounds.
- h. 'Service line' means any place where one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and taxi stands.
- i. 'Smoke or Smoking' means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates a vapor or aerosol, in any manner or in any form.
- j. 'Sports arena' means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
- k. 'Tobacco Product' or "Tobacco Products" means any product containing, made or derived from tobacco or contains synthetically produced nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine). "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

SEC. 5-6.03 APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES. Smoking shall be prohibited in all facilities, areas, and vehicles owned, leased, operated, or controlled by the City of Hayward or the Hayward Redevelopment Agency, and all such areas shall be subject to the provisions of this Article.

SEC. 5-6.04 PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS.

- a. Smoking shall be prohibited in any and all public places within the City of Hayward, whether enclosed or unenclosed, including but not limited to the following:
  - (1) Elevators and restrooms;

- (2) Buses, taxicabs, and other means of public transit offered within the City, and in ticket, boarding, and waiting areas of public transit depots, including bus shelters;
  - (3) Service lines;
  - (4) The sites of public events including, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs; provided however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area and no larger;
  - (5) Retail stores, except in areas in the stores not open to the public;
  - (6) Within enclosed common areas for hotels and motels, as well as 35 percent of private hotel and motel rooms rented to transients, as defined by Hayward Municipal Code, Chapter 8, Article 4.
  - (7) Restaurants, dining areas, and bars, whether enclosed or unenclosed;
  - (8) Public areas of libraries and museums when open to the public;
  - (9) Any facility used primarily for exhibiting any motion picture, stage drama, lecture, music recital, or other similar performance, except when smoking is part of any such production by the performers;
  - (10) Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
  - (11) Sports arenas, recreational areas, parks, playgrounds, and greenways.
- b. Notwithstanding any other provision of this Article, any person, business, nonprofit entity, owner, operator, manager, or employer who controls any premises described in this section may declare that entire establishment as a non-smoking establishment.
  - c. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this Article.

SEC. 5-6.05 REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

(This section removed by Ord. 10-13, Adopted Oct. 26, 2010)

SEC. 5-6.06 AREAS NOT SUBJECT TO SMOKING REGULATIONS.

- a. Private residences, except when used as a child care or a health care facility.
- b. Hotel and motel rooms rented to guests; provided, however that each hotel and motel designates not less than 35 percent of their guest rooms as non-smoking rooms and removes ashtrays from these rooms. Permanent “no smoking” signage shall be posted in nonsmoking rooms.

SEC. 5-6.07 POSTING OF SIGNS.

- a. “Smoke Free” or “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager, or other person having control of such building or other place.
  - (1) Every theater owner, manager, or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.
  - (2) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SEC. 5-6.08 TOBACCO SAMPLES PROHIBITED. No person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency, except in a retail tobacco store.

SEC. 5-6.09 TOBACCO VENDING MACHINES RESTRICTED. No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other applicable or similar device designed or used for vending purposes, except in a bar.

SEC. 5-6.10 ENFORCEMENT OFFICER. Enforcement shall be implemented by the City Manager or designee.

SEC. 5.6.11 CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

- a. It shall be unlawful for any person to smoke in any area restricted by the provisions of this section.

- b. It shall be unlawful for any person who owns, manages, operates, or otherwise controls any use of any premises subject to any regulation under this section to fail to comply with its provisions.
- c. Violations of this Article are subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the Hayward City Council. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.
- d. Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public during the normal course of operations, such smoking constitutes a public nuisance.
- e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.
- f. Upon a proper showing and hearing before the City Council that determines that a business establishment has violated the provisions contained in this section more than three times in any calendar year, the City Council has the discretion to revoke the business license of the establishment.
- g. The remedies provided by this Article are cumulative and in addition to any other remedy available at law or in equity.

SEC. 5-6.12. OTHER APPLICABLE LAWS. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.

*Ord. 14-18, amending Article 6 of Chapter 5 of the Hayward Municipal Code regarding Smoking Pollution Control, adopted July 1, 2014.*